



2021.

The Court notes at the outset that default judgment is not favored under the law. *See, e.g., United States v. Harre*, 983 F.2d 128, 130 (8<sup>th</sup> Cir. 1993). "Default judgment is appropriate where the party against whom the judgment is sought has engaged in willful violations of court rules, contumacious conduct, or intentional delays. However, default judgment is not an appropriate sanction for a marginal failure to comply with time requirements." *Forsythe v. Hales*, 255 F.3d 487, 490 (8th Cir. 2001). Here, nothing indicates that there is *any* failure to comply with time requirements, let alone a marginal one.

Federal Rule of Civil Procedure 4(h) states, in pertinent part, that a corporation may be served in the manner for serving individuals as set forth in Rule 4(e)(1). Rule 4(e)(1) states that service may be effectuated by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." The Notice and Acknowledgement form included with the documents served on Defendant states that service was conducted pursuant to Rule 4(e)(1) and Missouri state law. Doc. 10, p. 3.

Missouri Supreme Court Rule 54.16 states that service may be conducted via mail and must include a notice and acknowledgment form that the defendant must return to acknowledge receipt of service. Missouri's Rule 55.25 sets forth that the defendant's answer is due *after* the acknowledgement of receipt of summons is filed in the case if service was conducted by mail. To be clear, Rule 55.25 establishes that the timing of a defendant's answer is calculated from the moment the defendant signs and returns the acknowledgement of receipt, not when the summons was first received in the mail.

The Return of Service indicates that Defendant was served via certified mail on July 9,

2021. Doc. 10. The Notice and Acknowledgement of Receipt of Summons and Complaint which was included with the various documents served states that Defendant has 21 days to complete the acknowledgement and return it to the sender. Doc. 10, p. 3. A representative for Defendant signed and returned the acknowledgement on July 29, 2021, 20 days after receipt. The Notice also states that the defendant must answer the complaint within 21 days, and here Defendant filed its Answer on August 19, 2021, exactly 21 days after the acknowledgement was signed and returned. Thus, Defendant's Answer was timely filed. Accordingly, it is,

**ORDERED** that Plaintiff's Motion for Default Judgment, or in the Alternative, to Strike (Doc. 11), is denied.

**IT IS SO ORDERED.**

/s/ Jill A. Morris  
JILL A. MORRIS  
UNITED STATES MAGISTRATE JUDGE